IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 597 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

BIPIN NANALAL MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 597 of 2002

MR ZUBIN F BHARDA for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/09/2002

ORAL JUDGEMENT

1. By this appeal, the appellant challenges the judgment and order rendered by learned Special Judge, Valsad, at Navsari, on April 30, 2002, in Special Atrocity Case No.51 of 1999, convicting him for offences punishable under Sections 323 and 324 of Indian Penal Code and sentencing him to undergo simple imprisonment

for a period of one year and one and a half year, respectively, and to pay a fine of Rs.1,000/- and, in default, to undergo simple imprisonment for one month.

2. The facts of the case, in brief, are that one Ramanbhai Somabhai Rathod, working as a Watchman with Manekbhai, the owner of Sundar Sagar, was at his house. At about 9.00 P.M., present appellant, who resides just opposite the room of Ramanbhai Somabhai, shouted at him and asked him to come out. When Ramanbhai came out of the house, the appellant rushed after him with a sword like weapon and when he was about to hit, Ramanbhai raised his hand and, thereby, he sustained injury on the left wrist. Due to the shouts raised by Ramanbhai, his wife-Paliben came, so also the people from surrounding houses. The appellant, therefore, ran away with the weapon. There was some dispute between the two regarding some ear poisoning of the employer of Ramanbhai. A complaint was lodged with Umargaon Police. An offence was registered and charge sheet came to be filed after investigation. The case was committed to the Court of learned Special Judge (Atrocity) and Case No.51 of 1990 came to be registered. The accused pleaded not guilty to the charge and came to be tried.

2.1 After considering the evidence, the learned Special Judge recorded the conviction, as stated above. Hence, this appeal.

3. While admitting the appeal, the report of the Probation Officer was called. It has been considered and, it appears that, the appellant has antecedents of being involved in such activities earlier. Prosecution is pending in one of the cases.

4. It also appears from the report of the Probation Officer that, overall conduct of the applicant, other than this, is reasonably fair. However, taking an overall view of the report, this Court is not inclined to accept the report of the Probation Officer and grant the benefit of Probation of Offenders Act.

5. By consent of parties, the matter is taken up for final hearing.

6. Learned Advocate Mr. Bharda submitted that the appellant does not challenge the judgment and order of conviction, but mainly challenges the quantum of punishment inflicted upon the appellant by the Trial Court. Mr Bharda submitted the appellant is a young man of 35 years of age. He is a daily rated driver not

getting regular employment also. He had met with an accident and had undergone a surgery and his ailing therefrom and has a large family to support. Mr. Bharda submitted that if these aspects were considered by the Trial Court, the sentence would have been much lesser. Mr. Bharda submitted that this is a case where sympathetic consideration is required to be given to the case of the appellant. According to Mr. Bharda, the substantive sentence may be reduced to the minimum possible extent.

7. The appeal is opposed to by learned Additional Public Prosecutor Mr. Abichandani. According to him, the Court has considered all relevant facts and has inflicted punishment and this Court may not interfere with the quantum of punishment when the conviction is not seriously challenged. He, therefore, urged that the appeal may be dismissed.

8. Having regard to the rival side contentions, there is no dispute about the fact that the appellant has been working as a daily rated driver on a tempo and does not have a permanent job. It transpires from the report of the Probation Officer that he has a family to support. It is true that there are two previous prosecutions against the appellant, one of which is still pending. But in the other, he had entered into compromise with the other side. The appellant is a young man of 35 years of age and has old parents with impaired vision to support. He has two young children to look aver with a wife suffering from tuberculosis. In the opinion of this Court, if he is inflicted with a harsh punishment, he may get hardened further in the atmosphere of jail. But, at the same time, punishment has to be inflicted and, therefore, in the opinion of this Court, ends of justice would be met, if the sentence imposed in both the cases is reduced to a simple imprisonment of nine months for each of the offences.

9. The appeal is, therefore, partly allowed. The conviction of the appellant for offence punishable under Sections 324 and 323 of Indian Penal Code is confirmed. The order of sentence passed by the Trial Court is set aside and, instead, the appellant is ordered to undergo simple imprisonment for a period of nine months for each of the offences punishable under Sections 324 and 323, respectively. Both the sentences to run concurrently. Set off to be given for the period spent in jail during the trial. There shall be no change so far as sentence of fine is concerned.

10. Direct service is permitted.

[A. L. DAVE, J.]

gt